IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 73 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
KUNJLATABEN MANILAL SONI - Defendant(s)

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Appearance :
MR AY KOGJE, AGP for Appellant(s) : 1 - 2.
None for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/11/2006

ORAL JUDGMENT

1. Shri A.Y. Kogje, learned AGP for the appellants-State. None for the respondent though notice is

served.

2. The respondent-plaintiff was appointed as Administrator/Organizer under Mid Day Meal Scheme, letter of appointment was issued and she continued as Administrator/Organizer. On 25.9.85, Mamlatdar, who had appointed the petitioner terminated the services of the plaintiff, observing inter alia, that as the husband of the present plaintiff was working as Principal in the very same school, her appointment was contrary to the scheme and bad in law. Being aggrieved by the said order of termination, the plaintiff filed Regular Civil Suit No. 591/85, submitting inter alia, that the termination was bad as wrong interpretaion of the circular was made and the Mamlatdar had no authority to terminate the services as the appointment was made by the Deputy Collector. The learned trial court, after hearing the parties decreed the suit and as the Regular Civil Appeal No. 69 of 1987 at the instance of the appellant-State was dismissed by the learned District Judge on 7.10.89, the appellant-State

is before this Court. The appeal has been admitted for hearing the parties on the following substantial question of law:-

> “Whether in the facts and circumstances of the case, the lower appellate court has erred in not holding that the plaintiff's service being part time honorary service, she was not entitled to employment and therefore no order of reinstatement could be made?”

3. The question on which the appeal has been admitted for hearing, was never raised before the courts below. The parties had been contesting the litigation mainly on the ground that termination was bad because it was contrary to the circular and secondly, the Mamlatar had no jurisdiction. The State never submitted before the court below that the plaintiff being a part time honorary servant, she was not entitled to the employment. However, it is to be seen that the order of termination dated 25.9.85

is not based on a valid reason. It says that as her husband is posted as Principal, under the scheme, the plaintiff could not be appointed as Administrator/Organizer.

4. The learned first appellate court, after its thoughtful consideration has come to the conclusion that true interpretation of the circular would be that out of all the three posts, as provided under the Mid Day Meal Scheme, two persons of the same family could not be appointed. Undisputedly, the husband of the plaintiff was not appointed under the said scheme, but he was on regular appointment.

5. So far as the authority of Mamlatdar Court to issue the order dated 25.9.85 is concerned, even if I hold that he was the appointing authority and as such competent to issue notice of termination/removal from service, I still cannot hold that the reason for which the order exh. 26 was issued was valid, legal or germane. The order of termination exh. 26 is patently illegal.

6. Under the circumstances, I must hold that the

learned courts below were not unjustified in decreeing the suit. The appeal deserves to and is accordingly dismissed. As none appears for the other side, there shall be no costs. Interim relief, if any, stands vacated.

7. Let a decree be framed accordingly.

[R.S. GARG, J.]

pirzada/-